



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

REHEARING DECISION

BCS/149964

PRELIMINARY RECITALS

Pursuant to a petition filed June 13, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on a hearing was held on July 09, 2013, at Kenosha, Wisconsin. A Final Decision was issued on August 12, 2013. A rehearing request was filed by Kenosha County on September 3, 2013 and the rehearing was granted. A rehearing was held on October 15, 2013, at Kenosha, Wisconsin, telephonically.

The issue for determination is whether the petitioner's BadgerCare Plus (BCP) coverage was correctly terminated on June 1, 2013 due to access to other health insurance.

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (DID NOT APPEAR)
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Rhonda Kramer, Lead Worker, Racine Co.
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner received BCP with her child. She had a review for benefits on July 5, 2012.

3. On April 22, 2013 the agency received a wage cross match discrepancy regarding petitioner's income. The agency sent a Notice of Proof Needed to petitioner requesting that she provide paycheck stubs from her employer. The information was due back to the agency on May 1, 2013.
4. On May 6, 2013 the agency issued notice to petitioner that her BCP was closing effective June 1, 2013 for failing to provide verification. On May 15, 2013 the agency received the requested verification about petitioner's income.
5. The petitioner's total household income is \$2506.92 per month. This amount exceeds 133% of the federal poverty level for a household of 2.
6. The petitioner is offered health insurance subsidized by her employer. Her employer pays 80% of the premium. Her share of the premium is \$100.56 if only she is covered or \$191.08 if her child(ren) is/are also covered.
7. On May 28, 2013 the agency issued notice to petitioner that her BCP would remain closed in July 2013 because she had access to other health insurance. Her daughter remained eligible through June.


DISCUSSION

To be eligible for BCP, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. Effective July 1, 2012, the Department implemented new provisions concerning BCP eligibility for families with access to employer sponsored insurance. BCP Handbook, §7.3.1. Under the new policy, if an employer provides health insurance, members of the household are ineligible for BC+ under certain circumstances. BCP Handbook, §7.3.3. The new policy provides:

Beginning July 1, 2012, there are two Current Access policies in effect:

- The 80% Current Access Test.
- The 9.5% Current Access Test.

The 9.5% Current Access Test will be applied on or after July 1, 2012, but only to adult parents and caretakers and only when:

- A new application  or program request is submitted,
- New employment is reported,
- The next review/renewal is completed, or
- A parent or caretaker with employment is added to the assistance group.

Until one of the above circumstances occurs, the 80% Current Access Test will continue to apply to all non-pregnant, non-disabled parents and caretakers.

The 80% Current Access Test will continue to apply to non-exempt (See [7.1](#)) children.

BCP Handbook, §7.3.1.

At rehearing, the agency pointed out the error of fact in the previous decision in this matter. The petitioner *did* have a review on July 5, 2012. Thus, the 9.5% access test would apply because it occurred after July 1, 2012.

The 9.5% Access Test policy states:

For parents and caretakers who are not exempt (See 7.1), an individual with current access to employer sponsored health insurance is not eligible for BadgerCare Plus. An individual has current access to employer sponsored insurance if:

- the individual could enroll in and be covered under the plan in the month for which eligibility is being determined, **and**
- the cost of coverage for the employee-only plan does not exceed 9.5% of the monthly household income.

When an employed parent or caretaker has been determined to have current access, the individual's spouse will also be considered to have current access if the employer offers a plan that provides coverage to the spouse, such as employee + spouse or employee + family coverage.

Non-pregnant, non-disabled parents and caretaker relatives with household income above 150% of the FPL will not be eligible for BadgerCare Plus benefits if they have current access or will have access in the next three months to a State Employee's health care plan, regardless of the amount of the premium. Non-pregnant, non-disabled parents and caretaker relatives with access to state employee health insurance, who have income between 133% and 150% FPL, are only ineligible for BadgerCare Plus if the employee-only premiums are not more than 9.5% of household income.

There are no good cause reasons for not enrolling in a health insurance plan when an individual has current access.

BCP Handbook, §7.3.3.

Thus, because the petitioner could have enrolled in and been covered under the employer's plan prior to her July 2012 review, and the cost of coverage for the employee-only plan did not exceed 9.5% of the monthly household income, she was ineligible for the BCP. Petitioner did not appear at the rehearing to provide any further rebuttal or evidence. Her only argument at the original hearing was with respect to the unfairness of the policy. However, I do not have equitable powers and cannot deviate from what law and policy dictate. See Oneida County v. Converse, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). Thus, I find the agency acted correctly to terminate the BCP coverage.

CONCLUSIONS OF LAW

The petitioner's BCP coverage was correctly terminated on June 1, 2013 due to access to other health insurance.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

APPEAL TO COURT

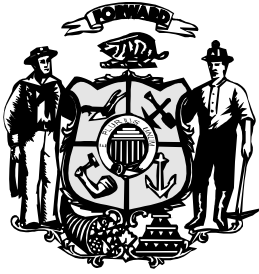
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of October, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoeft, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 16, 2013.

Kenosha County Human Service Department
Division of Health Care Access and Accountability